

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Rule making related to behavioral health services to medical assistance recipients

The Human Services Department hereby amends Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Iowa Administrative Code.

Legal Authority for Rule Making

This rule making is adopted under the authority provided in Iowa Code sections 249A.4, 249A.15, and 249A.15A.

State or Federal Law Implemented

This rule making implements, in whole or in part, Iowa Code sections 249A.4, 249A.15, and 249A.15A.

Purpose and Summary

These amendments reflect a recent statutory change entitling behavior analysts and assistant behavior analysts who are licensed pursuant to Iowa Code chapter 154D to payment for behavioral health services provided to recipients of medical assistance.

These amendments also reflect recent statutory changes entitling provisionally licensed psychologists, temporarily licensed marital and family therapists, and temporarily licensed mental health counselors who are licensed pursuant to Iowa Code section 154D.7 to payment for behavioral health services provided to recipients of medical assistance.

Public Comment and Changes to Rule Making

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on September 26, 2018, as **ARC 4031C**. The Department received comments from two respondents. A summary of those comments and the Department’s responses follows:

Comment 1: The respondent stated that this rule making eliminates the requirement that Medicaid cover fully licensed psychologists and that the rule making is not in alignment with the legislation. The respondent requested that the rules be revised to clarify the omission. In addition, the respondent noted that, in rule 441—77.22(249A), the Department referred to the Board of Behavioral Science in the provisional licensure of psychologists and that psychologists have their own board (Board of Psychology).

The respondent provided suggested language for rule 441—77.22(249A), which if revised as suggested would no longer include references to meeting the credentialing requirements of the National Register of Health Service Psychologists but would state that the following persons are eligible to participate in the Medicaid program as psychologists:

1. All psychologists licensed to practice in the state of Iowa;
2. Psychologists in other states when duly licensed to practice in that state;
3. Psychologists provisionally licensed to practice in the state of Iowa pursuant to Iowa Code section 154B.6 when the person possesses a doctoral degree in psychology from an institution approved by the Board of Psychology and provides treatment under the supervision of a licensed psychologist pursuant to Iowa Code section 154B.6; and
4. Psychologists provisionally licensed in other states when the person possesses a doctoral degree in psychology from an institution approved by the Board of Psychology and provides treatment under the supervision of a licensed psychologist pursuant to Iowa Code section 154B.6.

Department response 1: 2018 Iowa Acts, Senate File 2418, creates new Iowa Code section 514C.33 to include the payment of necessary behavioral health services provided by a person who holds a provisional license to practice psychology pursuant to Iowa Code section 154B.6 and who practices under the supervision of a supervisor who meets the qualifications determined by the Board of Psychology by rule.

These amendments do not make any changes to the licensed psychologist qualifications already covered in rule 441—77.22(249A), and the Board of Psychology’s rule 645—240.7(154B) requires that in order to be a health service provider in psychology, an applicant must verify at least two years of clinical experience in a recognized health service setting or meet the standards of the National Register of Health Service Providers in Psychology (now named the National Register of Health Service Psychologists, as reflected in the Department’s rule). As such, the Department will not be removing that language from rule 441—77.22(249A) at this time. The Department does agree that psychologists are licensed by the Board of Psychology and has replaced references to the Board of Behavioral Science with references to the Board of Psychology in rule 645—77.22(249A).

Comment 2: This respondent agreed that there is a need for Board-certified behavior analysts as recognized providers of behavioral health services but added that the process for obtaining and maintaining licensure is unclear. The respondent stated that clear licensure requirements are necessary to support this change to the Iowa Administrative Code.

Department response 2: 2018 Iowa Acts, Senate File 192, creates the licensure process for behavior analysts and assistant behavior analysts. The Board of Behavioral Science regulates behavior analysts and assistant behavior analysts. The Board may grant an applicant a license to practice as a behavior analyst when the applicant submits proof that the applicant has been certified as a behavior analyst or a behavior analyst-doctoral by the Behavior Analyst Certification Board or a similar entity accredited by the National Commission for Certifying Agencies of the American National Standards Institute. The Board of Behavioral Science may grant a license to practice as an assistant behavior analyst to an applicant who submits proof that the applicant has been certified as an assistant behavior analyst by a certifying entity. The applicant must also submit proof of ongoing supervision by a licensed behavior analyst. Senate File 192 takes effect January 1, 2019, but provides that the Board may begin implementation prior to that date as necessary to fully implement licensure by January 1, 2019. The licensing requirements are beyond the scope of these amendments, and therefore no changes will be made to the amendments at this time in response to this comment.

In addition to the change described in Department Response 1 above, the implementation sentences of rules 441—77.22(249A) and 441—77.26(249A) have been revised to remove proposed references to 2018 Iowa Acts since the amendments in the Acts are codified in the 2019 Iowa Code.

Adoption of Rule Making

This rule making was adopted by the Council on Human Services on November 14, 2018.

Fiscal Impact

These amendments may allow Medicaid members additional access to behavioral health services; however, any fiscal impact is expected to be minimal. Medicaid currently allows behavior analysts and assistant behavior analysts to provide services, but the supervising authority must do the billing. These amendments will allow for these two professional types to bill Medicaid directly. Since the Medicaid program is already incurring these costs, minimal impact is expected. The change adding provisionally licensed psychologists, temporarily licensed marital and family therapists, and temporarily licensed mental health counselors as eligible providers under Medicaid is expected to have minimal impact since the change is consistent with current policy.

Jobs Impact

These amendments may incentivize additional behavior analysts to practice in Iowa and enroll with Medicaid to deliver behavioral health services to Medicaid members.

Waivers

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to rule 441—1.8(17A,217).

Review by Administrative Rules Review Committee

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its [regular monthly meeting](#) or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

Effective Date

This rule making will become effective on January 9, 2019.

The following rule-making actions are adopted:

ITEM 1. Amend rule 441—77.22(249A) as follows:

441—77.22(249A) Psychologists.

77.22(1) All psychologists licensed to practice in the state of Iowa and meeting the current credentialing requirements of the National Register of Health Service Psychologists are eligible to participate in the medical assistance program. Psychologists in other states are eligible to participate when they are duly licensed to practice in that state and meet the current credentialing requirements of the National Register of Health Service Psychologists.

77.22(2) A psychologist provisionally licensed to practice in the state of Iowa pursuant to Iowa Code section 154B.6 is eligible to participate in the medical assistance program when the person:

a. Possesses a doctoral degree in psychology from an institution approved by the board of psychology; and

b. Provides treatment under the supervision of a licensed psychologist pursuant to Iowa Code section 154B.6. Claims for payment for such services must be submitted by the licensed psychologist.

77.22(3) A psychologist provisionally licensed in another state is eligible to participate when the person:

a. Possesses a doctoral degree in psychology from an institution approved by the board of psychology; and

b. Provides treatment under the supervision of a licensed psychologist pursuant to Iowa Code section 154B.6. Claims for payment for such services must be submitted by the licensed psychologist who is duly licensed to practice in that state.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

ITEM 2. Amend rule 441—77.26(249A) as follows:

441—77.26(249A) Behavioral health services. The following persons are eligible to participate in the Medicaid program as providers of behavioral health services.

77.26(1) No change.

77.26(2) Temporarily licensed marital and family therapists. Any person who holds a temporary license to practice marital and family therapy pursuant to Iowa Code section 154D.7 is eligible to participate when the temporarily licensed marital and family therapist provides treatment under the supervision of a qualified marital and family therapist as determined by the board of behavioral science by rule. Claims for payment for such services must be submitted by the supervising licensed marital and family therapist.

~~77.26(2)~~ **77.26(3)** *Licensed independent social workers (LISW)*. Any person licensed by the board of social work as an independent social worker pursuant to 645—Chapter 280 is eligible to participate. An independent social worker in another state is eligible to participate when duly licensed to practice in that state.

~~77.26(3)~~ **77.26(4)** *Licensed master social workers (LMSW)*.

a. and b. No change.

~~77.26(4)~~ **77.26(5)** *Licensed mental health counselors (LMC)*. Any person licensed by the board of behavioral science as a mental health counselor pursuant to Iowa Code chapter 154D and 645—Chapter 31 is eligible to participate. A mental health counselor in another state is eligible to participate when duly licensed to practice in that state.

77.26(6) *Temporarily licensed mental health counselors*. Any person temporarily licensed by the board of behavioral science as a mental health counselor pursuant to Iowa Code section 154D.7 is eligible to participate when the temporarily licensed mental health counselor provides treatment under the supervision of a qualified mental health counselor as determined by the board of behavioral science by rule. Claims for payment for such services must be submitted by the supervising licensed mental health counselor.

~~77.26(5)~~ **77.26(7)** *Certified alcohol and drug counselors*. Any person certified by the nongovernmental Iowa board of substance abuse certification as an alcohol and drug counselor is eligible to participate.

77.26(8) *Licensed behavior analysts*. Any person licensed by the board of behavioral science as a behavior analyst pursuant to Iowa Code chapter 154D is eligible to participate. A licensed behavior analyst in another state is eligible to participate when duly licensed to practice in that state.

77.26(9) *Licensed assistant behavior analysts*. A person licensed by the board of behavioral science as an assistant behavior analyst pursuant to Iowa Code chapter 154D is eligible to participate when the licensed assistant behavior analyst:

- a.* Holds current certification as an assistant behavior analyst by a certifying entity; and
- b.* Provides treatment under the supervision of a behavior analyst licensed pursuant to Iowa Code chapter 154D. Claims for payment for such services must be submitted by the supervising licensed behavior analyst.

This rule is intended to implement Iowa Code chapter 249A as amended by 2011 Iowa Acts, Senate File 233.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/5/18.